Yusoff bin Abdul Latib v Haji Adnan bin Haji Ramli & Anor

HIGH COURT (PENANG) — ELECTION PETITION NO 1 OF 1990
MOHAMED DZAIDDIN J
30 SEPTEMBER 1991

Elections *— Returning officer — Discretion to accept or reject nomination paper — Constituency's name omitted from nomination paper — Whether returning officer had exercised discretion correctly in accepting nomination paper — Documents other than nomination paper to identify place of constituency can be looked at — Elections (Conduct of Elections) Regulations 1981 regs 4(1), (3), (4)(a), (6) & 28*

Elections *— Nomination paper — Constituency name omitted from nomination paper — Whether nomination paper valid — Whether place of constituency was sufficiently identifiable from particulars given in nomination paper — Elections (Conduct of Elections) Regulations 1981 regs 4(6) proviso (ii) & 28*

Words and Phrases *— 'Place' — Elections (Conduct of Elections) Regulations 1981 reg 4(4)(a) & (6) proviso (ii)*

Words and Phrases *— 'Sufficiently identifiable' — Elections (Conduct of Elections) Regulations 1981 reg 4(6) proviso (ii)*

The petitioner and the first respondent were election candidates for the Penang state constituency of Permatang Pasir in the last general elections. On nomination day the petitioner and first respondent submitted their nomination papers to the returning officer, the second respondent. The petitioner then made an objection to the returning officer in respect of the fact that the first respondent had omitted to state the name of the state constituency in his nomination paper. The returning officer overruled the petitioner's objection on the ground that the first respondent's error was a technical one. The returning officer testified that after checking the particulars of the first respondent's proposer and seconder, the polling district code numbers and the electoral roll numbers, he was satisfied that the first respondent's nomination paper was for that particular state constituency. The petitioner then applied to the High Court by way of an election petition to declare, inter alia, the first respondent's nomination paper to be void.

Held, dismissing the petition:

(1) Regulation 4(4)(a) of the Elections (Conduct of Elections) Regulations 1981 must be read in the light of proviso (ii) to reg 4(6). Proviso (ii) gives the returning officer the discretion either to reject or accept the first respondent's nomination. However, the returning officer cannot reject the nomination if the place of the state constituency was sufficiently identifiable from the particulars given in the first respondent's nomination paper.

(2) In the context of reg 4(4)(a) of the 1981 Regulations, the returning officer could look at other particulars of the first respondent's nomination paper to discover the name of the constituency in which the first respondent was seeking election. Based on evi-

dence in this case, the returning officer had sufficiently identified the name of the constituency. A

(3) Regulation 28 of the 1981 Regulations reinforces proviso (ii) to reg 4(6) of the 1981 Regulations with respect to any error with regard to the name of the constituency. Applying both proviso (ii) to reg 4(6) and reg 28, the returning officer had properly rejected the petitioner's objection. B

[Bahasa Malaysia summary

Pempetisyen dan responden pertama adalah calon pilihanraya untuk bahagian pilihanraya negeri Permatang Pasir di Pulau Pinang dalam pilihanraya umum yang lalu. Pada hari penamaan calon, pempetisyen C dan responden pertama menyerahkan kertas penamaan mereka kepada pegawai pengurus, responden kedua. Pempetisyen kemudiannya membuat satu bantahan kepada pegawai pengurus berkenaan fakta bahawa responden pertama telah gagal menyatakan nama bahagian pilihanraya negeri di dalam kertas penamaannya. Pegawai pengurus telah menolak bantahan pempetisyen atas alasan bahawa kesilapan responden pertama D adalan berupa teknikal. Pegawai pengurus mengesahkan bahawa selepas memeriksa butir-butir pencadang dan penyokong (seconder) responden pertama, nombor kod daerah mengundi dan nombor daftar pemilih, beliau berpuashati bahawa kertas penamaan responden pertama adalah untuk bahagian pilihanraya negeri tersebut. Pempetisyen kemudiannya memohon kepada Mahkamah Tinggi menerusi satu petisyen pilihan- E raya untuk deklarasi bahawa, antara lain, kertas penamaan responden pertama adalah terbatal.

Diputuskan, menolak petisyen itu:

(1) Peraturan 4(4)(a) Peraturan Pilihanraya (Penjalanan Pilihanraya) 1981 mesti dibaca berpandukan proviso (ii) kepada peraturan F 4(6). Proviso (ii) memberikan pegawai pengurus budi bicara sama ada untuk menolak atau menerima penamaan responden pertama. Namun demikian, pegawai pengurus tidak boleh menolak penamaan itu jika tempat bahagian pilihanraya negeri itu boleh dikenalpasti secara mencukupi daripada butir-butir yang diberikan G di dalam kertas penamaan responden pertama.

(2) Dalam konteks peraturan 4(4)(a) Peraturan 1981 itu, pegawai pengurus boleh memerhati butir-butir lain dalam kertas penamaan responden pertama untuk mengetahui nama bahagian pilihanraya dalam mana responden pertama ingin bertanding. Mengikut keterangan di dalam kes ini, pegawai pengurus telah mengenalpasti H secara mencukupi nama bahagian pilihanraya itu.

(3) Peraturan 28 Peraturan 1981 itu menguatkan lagi proviso (ii) kepada peraturan 4(6) Peraturan 1981 itu berkenaan dengan apa-apa kesilapan tentang nama bahagian pilihanraya. Menggunakan kedua-dua proviso (ii) kepada peraturan 4(6) dan peraturan 28, pegawai pengurus telah menolak bantahan pempetisyen dengan I wajar.]

Cases referred to

1 *Exxon Corp v Exxon Insurance Consultants International* [1981] 2 All ER 495 (folld)

2 *Barnes v Jarvis* [1953] 1 WLR 649 (folld)

Legislation referred to
Elections Act 1958 s 16
Elections Offences Act 1954
Elections (Conduct of Elections) Regulations 1981 regs 4(1), (3), (4)(a), (6), (28)

Mohideen Abdul Kader (*Mohideen & Asamaley*) for the petitioner.
RJ Manecksha (*Ong & Manecksha*) for the first respondent.
Noor Azian bte Shaari (Senior Federal Counsel) (*Andri Aidham* with her) for the second respondent.
K Vijayananthan (*Sykt K Vijaya*) as observer for the Barisan National.
Ahmad Zaki bin Haji Husin (State Legal Adviser) as observer for the Penang State Government.

Cur Adv Vult

Mohamed Dzaiddin J: The issue in this election petition is very simple. Was the returning officer correct in rejecting the objection of the petitioner with respect to the omission of the first respondent to state the name of the state constituency of Permatang Pasir N11 in his nomination paper on 11 October 1990?

The facts are also very simple. Both the petitioner and the first respondent were candidates for the Penang state constituency of Permatang Pasir (N11) in the last general election. The petitioner was the Parti Islam Sa Malaysia (PAS) candidate whilst the first respondent represented the Barisan National. On nomination day on 11 October 1990 both candidates submitted their nomination papers to the second respondent at Bangunan Yayasan Aman, Penanti, Seberang Perai Tengah, the place of nomination for three state constituencies, including Permatang Pasir N11, and the Parliamentary constituency of Permatang Pauh. After 11am, the second respondent caused a copy of each of the candidates' nomination papers to be posted outside the bangunan. At about 11.30am, one Mansor bin Said (PW2) made a written objection to the second respondent regarding the nomination paper of the first respondent (D1) on the ground that D1 did not state the name of the constituency in which the first respondent was seeking election. Four other voters made similar objections. For the sake of clarity, the material parts of D1 are as follows:

Akta Pilihanraya 1958
Peraturan-Peraturan Pilihanraya (Penjalanan Pilihanraya) 1981
Borang 4A
[Peraturan 4(3)]

Negeri Pulau Pinang

Kertas Penamaan
Bahagian-pilihanraya Negeri *Pulau Pinang* (The emphasis is mine.)

Nama penuh: Md Isa bin Haji Ramli
No KP: 3480404
Nama-nama lain, jika ada: Tiada
Pekerja, jika ada: Tiada
Alamat tempat tinggal: 632 Kampong Pelet, 14400 Kubang Semang, Bukit Mertajam
Alamat dalam bahagian-pilihanraya: 632 Kampong Pelet, 14400 Kubang Semang, Bukit 1

After 12.30pm, the second respondent informed the petitioner and PW2 that he decided to overrule the objection on the ground that it was a technical error and then reduced his decision into writing (R26). In his evidence, the second respondent reiterated that the omission of the name of the constituency under 'Bahagian-pilihanraya Negeri ...' in D1 was a technical error. He also testified that he examined D1 and after checking the particulars of the proposer and the seconder in D1, the polling district code numbers and the electoral roll numbers, he was satisfied that D1 was the nomination paper for the state constituency of Permatang Pasir (N11).

The law

Elections in Malaysia are regulated and governed by the Elections Act 1958 (Act 19) and the Election Offences Act 1954 and regulations made in pursuance of s 16 of Act 19. For the present purpose we are concerned with the Elections (Conduct of Elections) Regulations 1981 and the material regulations are:

4(1) Any person eligible for election as a member of the Dewan Rakyat, or of the Legislative Assembly of a State, in accordance with the provisions of the Constitution of Malaysia, or the Constitution of a State, as the case may be, may be nominated as a candidate for election.

(2) ...

(3) Candidates shall be nominated by means of nomination papers which shall be as set out in Form 4 or 4A, as the case may be, in the First Schedule. Such nomination papers shall be submitted in triplicate.

(4) Each nomination papers shall be completely and correctly filled and shall state —

(a) the name of the constituency in which the candidate seeks election;

(b) in the case of election to a State Legislative Assembly, the name of the State concerned;

(c) the full name, other names, if any, identity card number, occupation, if any, and residential address of the candidate, and the candidate's address within the constituency for which the candidate seeks election to which documents relating to the election may be sent;

(d) the name, the polling district code, the number in the electoral roll and identity card number of the proposer and seconder, whose names must appear in the electoral rolls for the time being in force for the constituency for which the candidate seeks election; and

(e) the name, identity card number and address of the witness in the presence of whom the candidate affixes his signature.

(5) ...

(6) Failure to comply with paragraph (3), (4) or (5) shall render the nomination paper liable to be rejected by the returning officer:

Provided that no nomination paper shall be rejected on account of —

(i) any error or omission in the nomination paper in relation to the description of, or any particulars in respect of, the candidate, or his proposer, or his seconder, if the particulars contained in the nomination paper are sufficient to identify the candidate, or his proposer, or his seconder, as the case may be;

(ii) any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper; or

(iii) any error or omission which is capable of being corrected and is corrected upon being brought to the attention of the person presenting the nomination paper:

Provided further that the returning officer may direct that any clerical or printing error in the entries in the nomination paper be overlooked if the error is not of any material significance and does not affect the identification of the candidate, his proposer, or his seconder, or the identification of the constituency in respect of which the nomination paper is delivered.

It is also relevant to state reg 28 which reads as follows:

(1) No error which regard to —

(a) the name of any person or place; or
(b) any particulars, or any description, of, or in respect of, any person or place,

mentioned in any document whatsoever prepared, issued or used under or for the purpose of these Regulations shall in any manner affect the validity of such document or the operation of these Regulations in respect of that person or place if the contents of the document are otherwise sufficient to identify that person or place.

(2) In this regulation —

'document' includes any writ, report, return, list, form, notice, notification, nomination paper, statutory or other declaration, and any document of any other description or nature;
'error' includes any misnomer, misspelling, misprint, misplacement, mistake, inaccuracy, omission, any clerical, technical or printing error, and any error of any other description or nature; and
'particulars' and 'description' each includes anything stated or required to be stated in respect of any person or place in any document.

(3) In so far as this regulation applies to a nomination paper, the provisions of this regulation shall be construed as being in addition to, and in amplification of, and not in derogation of, the provisions of the provisos to regulation 4(6).

Before me the arguments of counsel were centered on the interpretations of the above reg 4(4)(a) and 4(6) and its proviso and reg 28. Tuan Haji Mohideen submitted that reg 4(4) is mandatory and under para (4)(a) the nomination paper must state the name of the constituency. The second respondent was wrong in rejecting the petitioner's objection on the ground of technicality and by exercising his powers under proviso (ii) of reg 4(6). Counsel contended that the aforesaid proviso of reg 4(6) did not apply to reg 4(4)(a) because under this regulation it is imperative that the name of the constituency must be specified in the nomination paper. It was also contended that in exercising his powers under proviso (ii) of reg 4(6) the second respondent cannot look at the particulars of the proposer and seconder given in D1 pursuant to reg 4(4)(c) and (d) to infer that the name of the constituency in which the first respondent was seeking election was Permatang Pasir N11. Counsel submitted that if such an interpretation is accepted it may give rise to an absurd situation. Lastly, he argued that the second respondent cannot look at documents other than the nomination paper in order to identify the constituency in which the first respondent was seeking election. I think what Tuan Haji Mohideen has in mind was the

evidence of the second respondent that he took into account the particulars in the deposit receipt (D2) paid on behalf of the first respondent for $3,000 which stated 'the deposit for Barisan Nasional candidate for State election N11 — Permatang Pasir'. The particulars of D2 including the receipt number of D2 were written on the top right hand corner of D1A and signed by the second respondent.

Both Puan Nor Azian and Encik R Manecksha submitted that proviso (ii) of reg 4(6) applied here because the words 'any place specified in the nomination paper' can be construed to include the name of the constituency under reg 4(4)(a). Counsel further submitted that the second respondent was correct in his decision by taking into consideration the particulars of the proposer and the seconder in D1 as well as the polling district code numbers and their electoral roll numbers in determining the name of the constituency of the candidate. In short, the crux of their submissions is that the second respondent had applied his mind correctly on the proviso (ii) of reg 4(6) and had come to a correct conclusion that the omission to state the name of the constituency in D1 was not fatal but merely technical. In addition, En Rumi submitted the error which respect to reg 4(4)(a) is saved by the general provision in reg 28 which states that any error with regard to a place or any description of such place shall not affect the validity of any document under the Regulations and reg 28 must be construed as being in addition to and amplification of proviso (ii) of reg 4(6).

It is clear to me under reg 4(4) nomination papers shall not only be completely and correctly filled, but shall also state, inter alia, the name of the constituency in which a candidate seeks election. In the instant case, in D1, after the words 'Bahagian Pilihanraya Negeri' were the words 'Pulau Pinang'. In my opinion, reading these words in the context of para 4(a) an error was committed here because on a proper construction of para (4)(a) the words 'Pulau Pinang' cannot be intended to be the name of the constituency. On the other hand, it is the legislative intention that the name of the constituency must refer to 'Permatang Pasir N11' because it was the constituency in which the first respondent was seeking election. It follows that by para (6) of reg 4, failure to comply with para (4)(a) shall render the nomination paper to be rejected by the returning officer. However, reg 4(4)(a) must be read in the light of proviso (ii) of para 6. This proviso says that no nomination paper shall be rejected by the returning officer on account of any error or omission with regard to any place specified in the nomination paper, if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper. It is thus clear to me that the above proviso gives the returning officer the discretionary power either to reject or accept the nomination. It is plain that he cannot reject the nomination paper on account of any error or omission with regard to any place specified therein, if such place is otherwise sufficiently identifiable from the particulars given in the said nomination papers.

Thus, what is required to be discussed first is the meaning of the word 'place' specified in the nomination paper. It is one of the general principles of construction that words should be given its ordinary natural meaning. 'The words must be treated as having their ordinary English meaning as applied to the subject matter with which they are dealing' (per Graham J in

Exxon Corpn v Exxon Insurance Consultants International[1]). As a matter of English usage, the word 'place' has several meanings. *The Shorter Oxford English Dictionary* (3rd Ed) gives the following meanings, viz an open space in a city, a square, a market-place, locality, a general designation for a city, town, village. In my opinion, in the context of para 4(a) of reg 4 the word 'place' must be intended to include the 'constituency'. According to the same dictionary, 'constituency' means 'a body of constituents; in looser use, the whole body of residents in a place so represented, the place itself.' Therefore, it is my conclusion that the reference to any 'place' under proviso (ii) is intended to include 'the constituency' in which the candidate seeks election under reg 4(4)(a).

Secondly, how does the returning officer satisfy himself 'if such place is otherwise sufficiently identifiable from the particulars given in the nomination paper? I think one should not lay too much stress on the meaning of the words 'sufficiently identifiable' for the word 'sufficient' simply means 'enough'. Lord Goddard CJ in *Barnes v Jarvis*[2] said at p 652 that 'a certain amount of common sense must be applied in construing a statute'. Hence, in my opinion, in the context of reg 4(4)(a), the second respondent can look at other particulars in the nomination paper to discover the name of the constituency in which the first respondent was seeking election. Based on evidence, I am satisfied that the second respondent had sufficiently identified the name of the constituency after examining the particulars of the proposer and the seconder, who must be voters for the constituency of Permatang Pasir N11, their numbers in the electoral roll and the polling district code numbers.

It seems clear to me that reg 28 reinforces para 6 of reg 4 with respect to any error with regard to the name of any place or any particulars or any description thereto. Regulation 28(1) says that any error with regard to the name of any person or place or their particulars or descriptions mentioned in any document issued for the purpose of these Regulations shall not affect the validity of such document. Under para (2) 'document' is defined to include nomination paper and 'error' means, inter alia, mistake, inaccuracy and omission. I think it must also be emphasized here that para (3) stipulates that in so far as reg 28 applies to a nomination paper, such as in the instant case, its provisions shall be construed as being in addition to and in amplification of, and not in derogation of the provisions of the provisos to reg 4(6).

Therefore, based on the evidence and the circumstances of this case and after applying the provisions of reg 4(6) proviso (ii) and 28, in my judgment, the omission to state the name of the constituency of Permatang Pasir N11 or in Bahasa Malaysia 'Kawasan Permatang Pasir N11' after the words 'Bahagian Pilihanraya Negeri' does not make the nomination paper D1 void. I am also satisfied that the returning officer, the second respondent, had in this case properly rejected the objections of PW2 and four others regarding D1. Accordingly, I dismiss this petition and order that the petitioner pays the respondents costs of this petition.

Petition dismissed.

Reported by Wong Kian Keong